IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5035 of 2006
to
FIRST APPEAL No. 5047 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
RABARI JALABEN JAYMALBHAI - Respondent(s)

==========

Appearance :
MR SUNIT S.SHAH GOVERNMENT PLEADER WITH MR KRUNAL D.PANDYA, AGP for Appellant(s) : 1 - 2.
MR AJ PATEL for Respondent(s)-Claimant(s)

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 14/12/2006

ORAL JUDGMENT (Per: HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. The abovenumbered Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment dated April 30, 2005, rendered by the learned Joint District Judge and 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.716/2002 to 728/2002, by which the claimants are awarded additional compensation at the rate of Rs.24/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer by his award dated July 28, 1998, at the rate of Rs.3.10 ps. per sq.mt., for their acquired lands.

2. A proposal was received by the State Government to acquire the lands of village Dhanpura, Taluka: Becharaji, District: Patan, for the public purpose of Narmada Canal Project. On consideration of the said

proposal, the State Government was satisfied that the lands of village Dhanpura were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on November 19, 1996. The land owners were thereafter served with notices under Section 4 of the Act. They objected to the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Dhanpura specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Canal Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on July 1, 1997. The interested persons were thereafter served with notices

under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated July 28, 1998, offered compensation to the claimants at the rate of Rs.3.10 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications dated August 3, 1998, requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly References were made to the District Court, Mehsana, which were registered as Land Acquisition Reference Case Nos.177/1999 to 189/1999. It may be mentioned that somewhere in the year 2002, a separate District of

Patan was formed by the State Government and it was directed that Taluka Becharaji would be one of the Talukas which would be included in District Patan. Therefore, the References were transferred from Mehsana Court to Patan Court whereupon, they were registered as Land Acquisition Reference Case Nos.716/2002 to 728/2002. On behalf of the claimants, the testimony of witness Prabhatbhai Vershibhai Rabari was recorded at Ex.31 whereas on behalf of the acquiring authorities, the testimony of witness Jagdipkumar Keshavlal Vaidhya, who was then the Deputy Executive Engineer, was recorded at Ex.40 and the testimony of witness Rameshbhai Kacharabhai Prajapati, who was then discharging duties in the office of the Special Land Acquisition Officer, Narmada Yojna, Mehsana, was recorded at Ex.42. The witness examined on behalf of the claimants produced previous award of the Reference Court relating to the lands of village Virsoda, Taluka: Mehsana, rendered in Land Acquisition Reference Nos.134/1997 to

145/1997, on November 29, 2001, in support of enhanced compensation claimed by the claimants. In the said case, notification under Section 4 of the Act was published in the official gazette on August 5, 1994, for acquiring the lands of village Virsoda for the public purpose of Narmada Canal and the District court had awarded in all compensation to the claimants of the said case at the rate of Rs.24/- per sq.mt. After taking into consideration the said award, the Reference Court, in the instant case, was of the opinion that the previous award of the Reference Court relating to the lands of village Virsoda furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. In ultimate analysis, the learned Judge was of the opinion that the claimants were entitled to additional compensation at the rate of Rs.24/- per sq.mt. Therefore, the Reference Court has awarded in all compensation at the rate of Rs.27.10 ps. per sq.mt. by common

judgment and award dated April 30, 2005, giving rise to the abovenumbered Appeals.

3. This Court has heard Mr.S.S.Shah, learned Government Pleader with Mr.Krunal D.Pandya, learned Assistant Government Pleader, for the appellants and Mr.A.J.Patel, learned Senior Advocate for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants for perusal of the Court.

4. The plea that References made under Section 18 of the Act were barred by limitation and therefore, the impugned award deserves to be set aside has no substance. As indicated hereinabove, the award was rendered by the Special Land Acquisition Officer on July 28, 1998, whereas the Reference Applications were filed on August 3, 1998, which were within the time prescribed by law. The Land Acquisition Reference numbers were registered in the year 2002 only because the References

were transferred from Mehsana Court to Patan Court and the year in which they were registered would not indicate that the applications were time barred. The record further shows that this plea was raised before the Reference Court and not pressed by the appellants. Under the circumstances, the plea that References were time barred and therefore, the impugned award is liable to be set aside cannot be entertained.

5. From the impugned award, it is evident that what is relied upon by the Reference Court for awarding additional compensation at the rate of Rs.24/- per sq.mt. is the previous award of the Reference Court rendered in respect of lands of village Virsoda, Taluka: Mehsana, which were acquired for the public purpose of Narmada Canal pursuant to publication of notification under Section 4(1) of the Act in the official gazette on August 5, 1994. However, the testimony of witness Prabhatbhai Vershibhai Rabari,

examined on behalf of the claimants at Ex.31, indicates that the distance between village Dhanpura from which the lands were acquired in the instant case and village Virsoda is roughly about ten kilometers (3 Gaus). Further, perusal of Ex.28 which is the previous award of the Reference Court relating to the lands of village Virsoda, makes it more than clear that the Reference Court had relied upon another previous award of the Reference Court relating to the lands of village Moti Rantai for the purpose of awarding compensation to the claimants at the rate of Rs.24/- per sq.mt. Probably, it is not the case of the claimants that their lands which were situated in village Dhanpura were comparable to the lands which were acquired from village Moti Rantai. Under the circumstances, strictly speaking, previous award of the Reference Court relating to the lands acquired from village Virsoda may not furnish good guidance for the purpose of determining the market value of the lands

acquired in the instant case. However, as held by the Supreme Court in State of Gujarat and others v. Rama Rana – (1997)2 SCC 693, the Court has a statutory duty to the society to subject the oral evidence to great scrutiny and then apply test of a normal and prudent man, i.e. whether he would be willing to purchase lands at the rates proposed by the Court. In the said case, neither the claimants nor the Government had taken any steps to adduce the best evidence and as a matter of fact, it was found that the Government had failed to adduce any evidence which would enable the Court to determine the market value of the lands acquired. However, the Supreme Court has held that on the touchstone of the principle, namely whether a prudent man would be willing to purchase the land at the rates proposed by the Court, the Court should evaluate the evidence subjectively and dispassionately and reach a finding on compensation. This Court has done the exercise as suggested by the Supreme

Court in the abovequoted decision and finds that the crop pattern obtaining in village Moti Rantai was the same as that of village Dhanpura from which the lands were acquired in the instant case and therefore, the previous award of the Reference Court relating to the lands of village Virsoda cannot be ignored altogether while determining the market value of the lands acquired in the instant case.

6. The learned counsels for the parties, after deliberating interse, have suggested that the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. and not at the rate of Rs.27.10 ps. per sq.mt., as held by the Reference Court. In view of the above state of affairs, the Appeals will have to be partly allowed by holding that the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. and to that extent, the award rendered by the Reference Court will have to be modified.

7. For the foregoing reasons, all the Appeals succeed in part. The common judgment and award dated April 30, 2005, rendered by the learned Joint District Judge, 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.716/2002 to 728/2002, awarding compensation to the claimants at the rate of Rs.27.10 ps. per sq.mt. is hereby modified and it is held that the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. The other directions given by the Reference court in the impugned award are not interfered with at all and are hereby confirmed. The Appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)